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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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AUG 1 2006 P 10:15

Jesus Torivio-Arias,

Affiant,

vs.

UNITED STATES OF AMERICA,

Respondent.

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Civil No.: 05-10417-NMG

Crim. No.: 99-40027

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**AFFIDAVIT IN SUPPORT OF \$2255 MOTION**

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COMES NOW, the affiant, Jesus Torivio-Arias, and, does hereby aver, upon personal knowledge and belief, the following facts in support of affiant's motion brought pursuant to \$2255.

- 1) that affiant has a Third Grade Education from the Dominican Republic;
- 2) that the affiant does not read English;
- 3) that affiant does not speak the English language;
- 4) that affiant does not understand the English language;
- 5) that affiant does not understand the technical niceties which is involved in law in America;
- 6) that affiant understood nothing, as far as legal explanation goes, during the plea and/or sentencing hearings;

- 7) that affiant did not know that there was the possibility of a written plea agreement;
- 8) that affiant did not understand the legal aspects of a written plea agreement verses a straight plea without an agreement;
- 9) that affiant believed that he would be sentenced to 180 months of imprisonment, due to the information reveived from counsel;
- 10) that affiant believed that he would be sentenced on the drugs he actually possessed, or, 136.9 grams;
- 11) that affiant was unsure of the proper response during the change of plea hearing concerning "Count 1" of the indictment. And, it took and off-the-record talk with counsel to have affiant plead guilty. (See Plea Tr. at p. 11);
- 12) that affiant was unsure of the proper response during the change of plea hearing concerning "Count 11" of the indictment. And, it took an off-the-record talk with counsel to have affiant plea guilty. (See Plea Tr. at pp. 11-12);
- 13) that the affiant's actual name is "Jesus Torivio-Arias;"
- 14) that affiant's alias is "Miguel Morales;"
- 15) that affiant was never informed by counsel that he could withdraw his guilty plea;

- 16) that affiant did not understand that due to changed circumstances he would not be sentenced to the 180 months;
- 17) that affiant was asked to relate the past criminal conduct of Jesus Torivio-Arias by the Probation Department, which affiant honestly did;
- 18) that affiant was not under a criminal justice sentence from the Middlesex Sheriffs Department;
- 19) that affiant placed his total trust in counsel(s), being without any understanding of the legal process in America, and, being unable to understand the English language;
- 20) that affiant did not knowingly plea guilty, due to lack of knowledge of the relevant law and/or facts involved;
- 21) that affiant did not voluntarily plea guilty, due to lack of knowledge of the relevant law and/or facts. Counsel only stated that the plea was the best course;
- 22) that affiant did not intelligently plea guilty, due to the lack of knowledge of the relevant law and/or facts;
- 23) that affiant did not know and/or understand that he would be pleading guilty to what actually amounted to a life sentence;
- 24) that affiant was coerced to plead guilty through lack of knowledge. He was informed that he had to plead guilty by counsel, and, could not withdraw the plea;

- 25) that affiant would have elected to go to trial instead of pleading guilty, if, affiant was informed that he would be receiving a life sentence (either 360 months or life = life);
- 26) that affiant did not obstruct justice intentionally, he merely answered the questions presented to him by the probation officer;
- 27) the affiant, not knowing the legal process, and, unable to understand the English language, and, having a Dominican Republic 3rd grade education, did not understand what exactly was required of him, due to never having the law and/or the process explained to affiant in detail;
- 28) that affiant believes that he is being sentenced and/or incarcerated for his lack of understanding of the English language, lack of legal knowledge, and, his educational level.

I, Jesus Torivio-Arias, affiant, does hereby attest and/or confirm, under the penalties of perjury, that the factual averments contained herein are true and correct to the best of my personal knowledge and belief.

Respectfully submitted,

Jesus Torivio  
Jesus Torivio-Arias  
#80221-038  
USP McCreary  
P.O. Box 3000  
Pine Knot, Kentucky  
42635-3000

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NOTARY PUBLIC

Robert M. Mays, Case Manager,  
Authorized by the Act of July 7, 1955, as  
amended, to administer oaths (18 U.S.C. § 4004).

Robert M. Mays 7/18/06  
(Signature)  
United States Penitentiary  
McCreary, KY